

EXHIBIT 22

Page 308

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 _____:

3 In re AMERICAN REALTY CAPITAL : Civil Action No.
4 PROPERTIES, INC. LITIGATION : 1:15-mc-00040-AKH

5 _____:

6 This Document Relates To: :
7 ALL ACTIONS. :
8 _____:

9 ARCHER CAPITAL MASTER FUND, L.P., : Civil Action No.
10 et al., : 1:16-cv-05471-AKH

11 Plaintiffs, :
12 vs. : VOLUME II

13 AMERICAN REALTY CAPITAL :
14 PROPERTIES, INC., et al., :
15 Defendants. :
16 _____:

17 (Caption continued on the next page)

18 ** CONFIDENTIAL ** CONFIDENTIAL **

19 VIDEOTAPED DEPOSITION OF EDWARD G. RENDELL

20 April 13, 2018

21 New York, New York

22 8:43 a.m.

23 Reported by:
24 Eileen Mulvenna, CSR/RMR/CRR
25 Job No. 10041043

Page 310

1 _____:

2 HG VORA SPECIAL OPPORTUNITIES : Civil Action No.
3 MASTER FUND, LTD., : 1:15-cv-04107-AKH

4 Plaintiff, :
5 vs. :
6 AMERICAN REALTY CAPITAL :
7 PROPERTIES, INC., et al., :
8 Defendants. :
9 _____:

10 JET CAPITAL MASTER FUND, L.P., : Civil Action No.:
11 et al., : 1:15-cv-00307-AKH

12 Plaintiffs, :
13 vs. :
14 AMERICAN REALTY CAPITAL :
15 PROPERTIES, INC., et al., :
16 Defendants. :
17 _____:

18 PENTWATER EQUITY OPPORTUNITIES : Civil Action No.:
19 MASTER FUND LTD., et al., : 1:15-cv-08510-AKH

20 Plaintiffs, :
21 vs. :
22 AMERICAN REALTY CAPITAL :
23 PROPERTIES, INC., et al., :
24 Defendants. :
25 _____:

Page 309

1 _____:

2 ATLAS MASTER FUND, LTD., et al., : Civil Action No.
3 : 1:16-cv-05475-AKH

4 Plaintiffs, :
5 vs. :
6 AMERICAN REALTY CAPITAL :
7 PROPERTIES, INC., et al., :
8 Defendants. :
9 _____:

10 BLACKROCK ACS US EQUITY TRACKER : Civil Action No.
11 FUND, et al., : 1:15-cv-08464-AKH

12 :
13 Plaintiffs, :
14 vs. :
15 AMERICAN REALTY CAPITAL :
16 PROPERTIES, INC., et al., :
17 Defendants. :
18 _____:

19 CLEARLINE CAPITAL PARTNERS LP, : Civil Action No.:
20 Et al., : 1:15-cv-08467-AKH

21 Plaintiffs, :
22 vs. :
23 AMERICAN REALTY CAPITAL :
24 PROPERTIES, INC., et al., :
25 Defendants. :

Page 311

1 _____:

2 PIMCO FUNDS: PIMCO DIVERSIFIED: :Civil Action No.
3 INCOME FUND, et al., :1:15-cv-08466-AKH

4 Plaintiffs, :
5 vs. :
6 AMERICAN REALTY CAPITAL :
7 PROPERTIES, INC., et al., :
8 Defendants. :
9 _____:

10 TWIN SECURITIES, INC., et al., :Civil Action No.
11 Plaintiffs, :1:15-cv-01291-AKH

12 vs. :
13 AMERICAN REALTY CAPITAL :
14 PROPERTIES, INC., et al., :
15 Defendants. :
16 _____:

17 JOANNE WITCHKO, Derivatively on : Lead Case No.:
18 Behalf of Nominal Defendant : 15-cv-06043-AKH

19 : (Consolidated
20 : w/Case No.
21 AMERICAN REALTY CAPITAL : 15-cv-08563-AKH)

22 PROPERTIES, INC., :
23 Plaintiff, :
24 vs. :
25 NICHOLAS S. SCHORSCH, et al., :

Page 372

1 significant.
 2 BY MR. USLANER:
 3 **Q. Significant wrongdoing?**
 4 MR. GARCIA: Objection.
 5 MR. SCHWARTZ: Objection.
 6 BY MR. USLANER:
 7 **Q. Is that yes?**
 8 A. Again, maybe "serious" is better than
 9 "significant." I -- suffice it to say, it indicated
 10 wrongdoing that was something that we wanted to get
 11 out to the investor world and to the market.
 12 **Q. Are you -- strike that.**
 13 **You recall that Lisa McAlister was the**
 14 **company's chief accounting officer during the time**
 15 **in which you were on ARCP's board?**
 16 A. For the lion's share of the time I was
 17 on the board.
 18 **Q. Are you aware that Ms. McAlister has**
 19 **pled guilty to securities fraud?**
 20 A. Yes.
 21 **Q. And you understand that she pled**
 22 **guilty as to securities fraud in connection with her**
 23 **work at ARCP; correct?**
 24 MR. SCHWARTZ: Objection.
 25 THE WITNESS: Yes.

Page 374

1 exactly did what, so I couldn't tell you with
 2 any definitive knowledge that -- what she
 3 did, but suffice to say that there were
 4 misrepresentations.
 5 BY MR. USLANER:
 6 **Q. Misrepresentations by the company.**
 7 MR. SCHWARTZ: Objection.
 8 MR. GARCIA: Objection.
 9 THE WITNESS: Clearly.
 10 BY MR. USLANER:
 11 **Q. And you'd agree with me that those**
 12 **misrepresentations were material; right?**
 13 MR. GARCIA: Objection.
 14 MR. SCHWARTZ: Objection.
 15 THE WITNESS: Again, subject to
 16 characterization, but they were -- they were
 17 enough to have us do a restatement.
 18 BY MR. USLANER:
 19 **Q. What do you mean by that, "they were**
 20 **enough to have us do the restatement"?**
 21 A. It caused us to issue a restatement.
 22 **Q. What did you understand -- strike**
 23 **that.**
 24 **You approved of the company's**
 25 **issuances of a restatement; correct?**

Page 373

1 BY MR. USLANER:
 2 **Q. Do you have an understanding as to**
 3 **what she admitted she did?**
 4 A. No.
 5 **Q. Do you dispute her admission that ARCP**
 6 **misstated its financials?**
 7 MR. GARCIA: Objection.
 8 MR. SCHWARTZ: Objection.
 9 THE WITNESS: No, I think we indicated
 10 that in the 8-K and in the restatement.
 11 BY MR. USLANER:
 12 **Q. Do you dispute her admission that she**
 13 **committed securities fraud?**
 14 MR. GARCIA: Objection.
 15 MR. SCHWARTZ: Objection.
 16 THE WITNESS: I don't know the
 17 definition of criminal securities fraud.
 18 BY MR. USLANER:
 19 **Q. Do you dispute her admission that she**
 20 **made -- strike that.**
 21 **Do you dispute her admission that she**
 22 **made material misrepresentations to investors?**
 23 MR. SCHWARTZ: Objection.
 24 MR. GARCIA: Objection.
 25 THE WITNESS: I'm not aware of who

Page 375

1 A. Yes. I mean, it was our decision.
 2 **Q. And what did you understand you were**
 3 **approving in issuing a restatement for the company?**
 4 A. Well, the first -- the first -- well,
 5 we were clearing up the errors that were in the
 6 financial statement and admitting that there was --
 7 that they were misleading.
 8 **Q. Are you aware of -- strike that.**
 9 **Do you recall a gentleman by the name**
 10 **of Brian Block?**
 11 A. Yes.
 12 **Q. He was the CFO of ARCP while you were**
 13 **on the board; correct?**
 14 A. For most of the time I was on the
 15 board.
 16 **Q. Are you aware that Mr. Block was**
 17 **convicted of securities fraud?**
 18 A. Yes.
 19 **Q. Do you have an understanding as to the**
 20 **conduct for which he was convicted?**
 21 MR. SCHWARTZ: Objection.
 22 THE WITNESS: Again, I don't know who
 23 exactly did what, but it was the conduct
 24 of -- of -- he was charged with producing
 25 misleading information.

<p style="text-align: right;">Page 376</p> <p>1 BY MR. USLANER:</p> <p>2 Q. And you agree that he produced</p> <p>3 misleading information?</p> <p>4 MR. SCHWARTZ: Objection.</p> <p>5 THE WITNESS: Absolutely.</p> <p>6 BY MR. USLANER:</p> <p>7 Q. When the company issued its</p> <p>8 restatements, the restatement you approved, the</p> <p>9 company was not merely reporting a change in</p> <p>10 management's perspective, it was reporting material</p> <p>11 errors; correct?</p> <p>12 MR. GARCIA: Objection.</p> <p>13 MR. SCHWARTZ: Objection.</p> <p>14 Instruct the witness not to answer to</p> <p>15 the extent his understanding is based on</p> <p>16 communication with counsel or E&Y.</p> <p>17 THE WITNESS: I'm sorry. Can you read</p> <p>18 back the question.</p> <p>19 BY MR. USLANER:</p> <p>20 Q. I'm not -- I appreciate your patience.</p> <p>21 MR. SCHWARTZ: Objection.</p> <p>22 MR. USLANER: Again, Mr. Schwartz, I</p> <p>23 would advise you, he understands your</p> <p>24 instruction. And inserting it each time</p> <p>25 really is interfering with the deposition.</p>	<p style="text-align: right;">Page 377</p> <p>1 Okay?</p> <p>2 MR. SCHWARTZ: I disagree with your</p> <p>3 characterization.</p> <p>4 Q. Okay. Thank you. I appreciate --</p> <p>5 MR. SCHWARTZ: And this is the first</p> <p>6 I'm hearing that your position is that I'm</p> <p>7 not allowed to object, instruct the witness</p> <p>8 to maintain the company's privilege. I think</p> <p>9 that's totally inconsistent with the court's</p> <p>10 ruling.</p> <p>11 MR. USLANER: If you could please stop</p> <p>12 talking on the record. Thank you.</p> <p>13 BY MR. USLANER:</p> <p>14 Q. You understood, sir, that when the</p> <p>15 company issued its restatement, the one you</p> <p>16 approved, it was not merely reporting a change in</p> <p>17 management's perspective, it was reporting material</p> <p>18 errors; correct?</p> <p>19 MR. SCHWARTZ: Same objection.</p> <p>20 Same instruction.</p> <p>21 THE WITNESS: Give it to me one more</p> <p>22 time. I apologize.</p> <p>23 BY MR. USLANER:</p> <p>24 Q. Not a problem.</p> <p>25 You understood that when the company,</p>
<p style="text-align: right;">Page 378</p> <p>1 ARCP, issued its restatement, the one you approved,</p> <p>2 the company was not merely reporting a change in</p> <p>3 management perspective, it was reporting material</p> <p>4 errors in its prior financials; correct?</p> <p>5 MR. SCHWARTZ: Same objection.</p> <p>6 Same instruction.</p> <p>7 MR. GARCIA: Objection.</p> <p>8 THE WITNESS: Yes. And correcting</p> <p>9 them with the proper financial statements,</p> <p>10 which I think was equally important.</p> <p>11 BY MR. USLANER:</p> <p>12 Q. Did all of the members of ARCP's board</p> <p>13 at the time approve the company's issuance of the</p> <p>14 restatement?</p> <p>15 A. To the best of my recollection, we</p> <p>16 were unanimous.</p> <p>17 Q. Do you recall anyone voicing any</p> <p>18 disapproval with the findings conveyed in the</p> <p>19 restatement?</p> <p>20 A. No.</p> <p>21 Q. Did anyone -- strike that.</p> <p>22 Do you recall having discussions with</p> <p>23 ARCP's management about the restatement prior to its</p> <p>24 issuance?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 379</p> <p>1 Q. Did anyone at ARCP voice any</p> <p>2 disagreement with the contents of the restatement?</p> <p>3 A. No, I think management was keenly</p> <p>4 aware that the board wanted to do this.</p> <p>5 (Exhibit 285, Previously marked.)</p> <p>6 BY MR. USLANER:</p> <p>7 Q. Sir, I'm handing you what's been</p> <p>8 previously marked as Exhibit 285.</p> <p>9 MR. USLANER: For the record,</p> <p>10 Exhibit 285 has been previously marked, and</p> <p>11 it bears the Bates Stamp GT-ARCP DOC_00613842</p> <p>12 through 3854.</p> <p>13 (Witness peruses the exhibit.)</p> <p>14 MR. SCHWARTZ: I believe this document</p> <p>15 was the subject of an objection at the</p> <p>16 Estrada deposition and the company's position</p> <p>17 was stated on the record there. And just</p> <p>18 incorporate that position here as well today.</p> <p>19 MR. GARCIA: Just for the record, the</p> <p>20 document goes to 53, but --</p> <p>21 MR. USLANER: Okay.</p> <p>22 BY MR. USLANER:</p> <p>23 Q. Sir, for your reference, I'm going to</p> <p>24 be focusing on the presentation by Grant Thornton to</p> <p>25 the audit committee and specifically the appendix to</p>


Page 612

1 today's questioning of Governor Edward
2 Rendell. We are going off the record at 1700
3 on this day of Friday, April 13, 2018.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 614

1 DECLARATION UNDER PENALTY OF PERJURY
2 Case Name: In re American Realty Capital
Properties, Inc. Litigation
3 Date of Deposition: 04/13/2018
4 Job No.: 10041043
5
6 I, EDWARD RENDELL, hereby certify
7 under penalty of perjury under the laws of the State of
8 _____ that the foregoing is true and correct.
9 Executed this _____ day of
10 _____, 2018, at _____.
11
12
13 _____
14 EDWARD RENDELL
15
16 NOTARIZATION (If Required)
17 State of _____
18 County of _____
19 Subscribed and sworn to (or affirmed) before me on
20 this _____ day of _____, 20____,
21 by _____, proved to me on the
22 basis of satisfactory evidence to be the person
23 who appeared before me.
24 Signature: _____ (Seal)
25

Page 613

1 C E R T I F I C A T E
2
3 STATE OF NEW YORK)
4) ss:
5 COUNTY OF WESTCHESTER)
6
7 I, Eileen Mulvenna, CSR/RMR/CRR and a
8 notary public within and for the State of New York,
9 do hereby certify:
10 That I reported the proceedings in the
11 within-entitled matter, and that the within
12 transcript is a true record of such proceedings.
13 I further certify that I am not related by
14 blood or marriage to any of the parties in this
15 matter and that I am in no way interested in the
16 outcome of the matter.
17 Further, that if the foregoing pertains to
18 the original transcript of a deposition in a federal
19 case, before completion of the proceedings, review of
20 the transcript [X] was [] was not requested.
21 IN WITNESS WHEREOF, I have hereunto set my
22 hand this 23rd day of April, 2018.
23
24 
Eileen Mulvenna, CSR/RMR/CRR
25

Page 615

1 DEPOSITION ERRATA SHEET
2 Case Name: In re American Realty Capital
Properties, Inc. Litigation
Name of Witness: Edward Rendell
3 Date of Deposition: 04/13/2018
Job No.: 10041043
4 Reason Codes: 1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.
5
6 Page _____ Line _____ Reason _____
7 From _____ to _____
8 Page _____ Line _____ Reason _____
9 From _____ to _____
10 Page _____ Line _____ Reason _____
11 From _____ to _____
12 Page _____ Line _____ Reason _____
13 From _____ to _____
14 Page _____ Line _____ Reason _____
15 From _____ to _____
16 Page _____ Line _____ Reason _____
17 From _____ to _____
18 Page _____ Line _____ Reason _____
19 From _____ to _____
20 Page _____ Line _____ Reason _____
21 From _____ to _____
22 Page _____ Line _____ Reason _____
23 From _____ to _____
24 Page _____ Line _____ Reason _____
25 From _____ to _____